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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,520	01/18/2002	Harry Giewercer		7761

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Harry Giewercer
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CANADA

EXAMINER

HOOLAHAN, AMANDA J

ART UNIT PAPER NUMBER

2859

DATE MAILED: 12/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/050,520

Applicant(s)

GIEWERCER, HARRY

Examiner

Amanda J Hoolahan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4, 6, 7, 13, 15, 17, and 18 are rejected under 35 U.S.C. 102(b) as being unpatentable by USPN 5,482,163 to Hoffman.

Numerals A, B, and C have been added to Figure 6 in reference to certain components of the invention disclosed by Hoffman. See copy attached at the end of this action.

Hoffman discloses a device for indicating medication dosage time comprising a medication container (102) having a curved exterior side surface; a band member (106), the band being deformable, and defining a structural area for engagement; means for mounting (column 3, lines 42-43) said band member continuously around the curved exterior side surface of said container such that said mounted band may be rotated about said container; a band support member (120) defining a structural area adapted to receive engagement therewith said band member; means for attaching (column 3, lines 54-55) said band support member to said medication container; co-operating indicia (A) on the band member and the band support member for indicating a medication dosage time, whereby a patient can be greatly assisted in following a medication dosage regimen; an arrangement of times (B) on said band support member; a pointer (C) on said band member adapted to point to any one of said times; indicia being inscribed; the band member is adhesively formed into a continuous band; band member

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has gripping means (column 2, lines 40-42) to aid grasping said band for displacement; band support member has anti-displacement means (118) for limiting displacement of said band member; the medication container (120) is substantially cylindrical; normal use of the device disclosed by Hoffman comprises the method steps of providing a container of medicine, the container having a curved exterior surface; providing a band member, the band being deformable and defining a structural area for engagement; providing a band support member defining a structural area adapted to receive engagement therewith and said band member, where said band and said band support include co-operating indicia for indicating a medication dosage time; attaching said band support member to said medication container; mounting said band member continuously around the curved exterior side surface of said container such that said mounted band may be rotated about said container; rotating said mounted band about said container until the co-operating indicia indicate a desired medication time; said step of mounting is performed prior to said step of attaching; a device comprising a band member (106), the band being deformable, and defining a structural area for engagement; a medication container (102) having a curved exterior side surface such that, said side surface defines a structural area adapted to support thereby said band, said side surface defines a structural area adapted to receive engagement therewith said band; means for mounting (column 3, lines 42-43) said band member continuously around the exterior side surface of said container such that said mounted band may be rotated about said container; co-operating indicia (A) on the band member and the band support member for indicating a medication dosage time, whereby a patient can be greatly assisted in following a medication dosage regimen.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman.

Hoffman discloses the device as described above in paragraph 2.

Hoffman discloses an arrangement of times (B) on said band support member; a pointer (C) on said band member adapted to point to any one of said times; band member has gripping means (column 2, lines 40-42) to aid grasping said band for displacement. The arrangement of times being on the band support member or the band, absent any criticality, is considered to be nothing more than a choice of engineering skill, choice or design because neither non-obvious nor unexpected results, i.e., results which are different in kind and not in degree from the results of the prior art, will be obtained as long as the arrangement of times being on either the band support member or the band are well known alternate design choices which will perform the same function, if one is replaced with the other, the use of the particular arrangement of times is considered to be nothing more than the use of one of numerous and well known alternate design choices that a person having ordinary skill in the art would have been able to provide using routine experimentation in order to aid the user in following a medication dosage regimen.

5. Claims 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman in view of USPN 4,883,180 to Humphrey et al. [hereinafter Humphrey].

Hoffman discloses the device as described above in paragraph 2.

Hoffman does not disclose the device having the band support member being integrally combined with a prescription label; the band support member prescription label being adhesively attached to medication container; and the band support member prescription label being mechanically separated into band support and a prescription label.

Humphrey discloses a band support member (14) being integrally combined with a prescription label (13) and the band support member prescription label being mechanically separated into band support and a prescription label (see Figure 1). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to replace the band support member/prescription label connection, as taught by Hoffman, with the connection, as taught by Humphrey, in order for the user to more easily disconnect the system for reuse.

6. Claims 5 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman in view of USPN 5,577,335 to Tucker.

Hoffman discloses the device as described above in paragraph 2.

Hoffman does not disclose the band support member being adhesively attached to the medication container or the method step of attaching the band support member with adhesive.

Tucker discloses a device comprising a band support member (26) being adhesively attached to a medication container (29). Normal manufacture of the device disclosed by Tucker

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comprises the method step of attaching the band support member with adhesive. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to attach the band support member to the medication container, disclosed by Hoffman, with adhesive, as taught by Tucker, in order to better secure the band support member to the container.

7. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman and Humphrey as applied to claim 10 above, and further in view of Tucker.

Hoffman and Humphrey together disclose the device as described above in paragraph 5.

Hoffman and Humphrey do not disclose the band support-prescription label being adhesively attached to the medication container.

Tucker discloses a device comprising a band support member (26) being adhesively attached to a medication container (29). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to attach the band support-prescription label, as taught by Hoffman and Humphrey, with adhesive, as taught by Tucker, in order to better secure the band support member to the container.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. USPN 3,757,441 to Baustin, USPN 6,068,149 to Telega, USPN 5,967,350 to Jones, and USPN 6,089,180 to Nichols Jr. disclose devices for indicating medication dosage times.

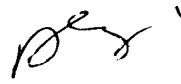
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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amanda J Hoolahan whose telephone number is (703) 308-0139. The examiner can normally be reached on Monday through Friday 8:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F Gutierrez can be reached on (703) 308-3875. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9318 for regular communications and (703) 872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1782.

ajh
December 11, 2002



Diego Gutierrez
Supervisory Patent Examiner
Technology Center 2800

FIG. 3

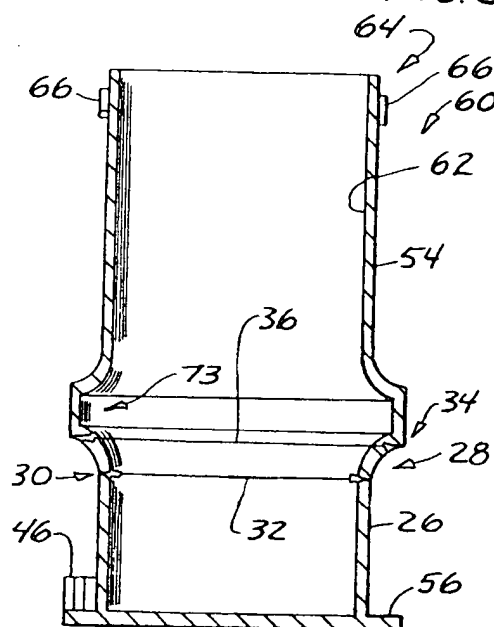


FIG. 4

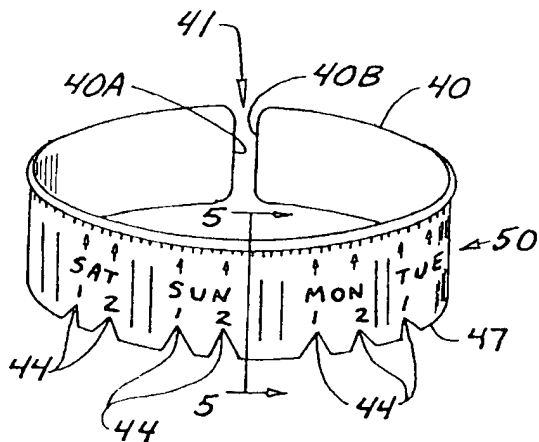


FIG. 6

